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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	NO. CR-08-2097-LRS
Respondent,)	
)	
-vs-)	
)	ORDER DENYING CERTIFICATE OF
ALBERT ZUNIGA,)	APPEALABILITY AND MOTION FOR
)	RECONSIDERATION AND EVIDENTIARY
Petitioner.)	HEARING

12 BEFORE THE COURT is Petitioner's "PLAINTIFFS CONSOLIDATED RETURN OF
13 PROPOSED FINAL DECISION, MEMORANDUM, & ORDER; FRCP RULE 60(b)(3)-(6) VOID
14 JUDGMENT NOTICE; FRCP RULE 52(b), 59(a)(2) & (d)-(e) APPLICATION FOR FULL
15 DETERMINATION & JUDGMENT; & AFFIDAVIT IN SUPPORT IN VERIFICATION [FRCP
16 RULE 59(c)]," ECF No. 264, which this court will construe to be a motion
17 for reconsideration of this court's Order Denying 28 U.S.C. § 2255 Motion
18 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody,
19 filed August 22, 2011 (ECF No. 263) and an application for a certificate
20 of appealability. The motion is submitted by Albert Zuniga, who is
21 appearing *pro se* for the purposes of these proceedings. Petitioner did
22 not note the instant motion pursuant to local rules.

23 A certificate of appealability must be obtained by a petitioner in
24 order to pursue an appeal from a final order in a Section 2255 habeas
25 corpus proceeding. 28 U.S.C. Section 2253(c)(1)(A); Fed. R. App. P.
26 22(b). A certificate of appealability should be issued only where the

1 appeal presents a substantial showing of the denial of a constitutional
2 right. 28 U.S.C. Section 2253(c)(2). A certificate should issue where
3 the prisoner shows that jurists of reason would find it debatable whether
4 the petition states a valid claim of the denial of a constitutional
5 right, and whether the district court was correct in its procedural
6 ruling. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595 (2000).

7 For the reasons adequately set forth in the "Order Denying 28 U.S.C.
8 §2255 Motion," ECF No. 263, this court concludes jurists of reason would
9 not find it debatable that this court was correct in its ruling on the
10 merits of the claims, i.e., that his constitutional rights were not
11 violated. To the extent Petitioner's request is for issuance of a
12 certificate of appealability, such a request is respectfully **DENIED**. In
13 addition, Mr. Zuniga's request for an emergency hearing and evidentiary
14 hearing are also denied.

15 To the extend Petitioner is requesting a motion for reconsideration,
16 the court notes that such motions for reconsideration serve a limited
17 function. Under the Federal Rules of Civil Procedure, motions for
18 reconsideration may be made pursuant to Rule 59(e). The major grounds
19 for granting a motion to reconsider a judgment are: (1) intervening
20 change of controlling law; (2) availability of new evidence; and (3) the
21 need to correct clear error or prevent manifest injustice. *School*
22 *District No. 1J, Multnomah County Oregon v. AcandS, Inc.*, 5 F.3d 1255,
23 1263 (9th Cir.1993); *Duarte v. Bardales*, 526 F.3d 563, 567 (9th Cir.
24 2008). Mr. Zuniga does not contend that there is newly discovered
25 evidence or that controlling law has changed. Instead Mr. Zuniga
26 continues to re-argue that his attorney Ms. Stevens deprived him of his

1 constitutional right to effective assistance of counsel. Mr. Zuniga
2 states: "During the trial, but for counsels unconscionable deference to
3 the Plaintiffs attorneys - whoever the Plaintiff really is, the missing
4 elements and fatal flaws would have come out and required judgment for
5 acquittal as a matter of law." ECF No. 264 at 2.

6 A motion for reconsideration is not appropriately brought to present
7 arguments already considered by the Court. *Backlund v. Barnhart*, 778
8 F.2d 1386, 1388 (9th Cir.1985). For all the foregoing reasons, the Court
9 respectfully denies Petitioner's motion.

10 Accordingly,

11 **IT IS ORDERED** that:

12 1. Mr. Zuniga's motion for reconsideration and request for
13 certificate of appealability, **ECF No. 264**, is **DENIED**.

14 2. The District Court Executive is directed to:

15 (a) File this Order; and

16 (b) Provide a copy to Petitioner **AND TO** the United States
17 Attorney, Yakima, Washington.

18 **DATED** this 7th day of October, 2011.

19 **s/Lonny R. Suko**

20 _____
21 LONNY R. SUKO
22 UNITED STATES DISTRICT JUDGE
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